

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of:

THE APPLICATION OF THE GTE SPRINT)
COMMUNICATIONS CORPORATION FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO OFFER INTERCITY) CASE NO. 9030
TELECOMMUNICATIONS SERVICES TO THE)
PUBLIC IN THE COMMONWEALTH OF)
KENTUCKY AND FOR THE ESTABLISHMENT)
OF INITIAL RATES)

O R D E R

On April 6, 1984, GTE Sprint Communications Corporation ("Sprint"), filed its application for a certificate of public convenience and necessity to provide communications services to the public within the Commonwealth of Kentucky. The Attorney General's Division of Consumer Protection, AT&T of the South Central States, Inc., ("ATTCOM") and the Independent Telephone Company, Inc., were permitted to intervene.

On October 30, 1984, the Commission held a hearing in this matter. Briefs were filed on November 12 and 16, 1984.

Sprint plans to provide resale of message telecommunications service ("MTS") and wide area telecommunications service ("WATS") and also provide similar services over Sprint-owned microwave and other facilities.

Sprint is a wholly-owned subsidiary of GTE corporation, is incorporated in the state of Delaware, and is authorized to do business in Kentucky.

Sprint has been granted a certificate of public convenience and necessity by the Federal Communications Commission ("FCC") to own and operate an interstate communications system. Sprint's interstate network is one of the largest in the nation with \$345.5 million invested as of March 31, 1983. The network covers 10,600 route miles. Subscribers in more than 350 metropolitan areas in 46 states may originate calls on Sprint's interstate network and may terminate calls in any location in any of the 50 states. Sprint plans to offer the same type of service to subscribers in Kentucky.

Over 20 percent of Sprint's employees including engineers, technicians, and designers are involved in technical activities. Sprint employees install and maintain its switching system which consists of 55 switches and 69 technical operations centers which process approximately 1.6 million calls per day. Over 135 engineers are employed at the corporate headquarters to research, test and evaluate switching systems which are used by Sprint.

Sprint's facilities on a nationwide basis include microwave networks, fiber optics, and satellites and ground facilities. Sprint plans to construct a digital radio route in northern Kentucky with connections to Lexington and Louisville.¹ Customers will be connected to Sprint via the local exchange network.

Currently, Sprint offers interstate services to the cities of Lexington and Louisville in Kentucky. Sprint presently has

¹ See Sprint's response to information request dated November 7, 1984.

more than 3000 Kentucky customers which subscribe to its interstate services. Initially, Sprint plans to use existing leased facilities to provide services to Kentucky residents on an intrastate basis.

The brief filed by ATTCOM raised an issue regarding whether Sprint should be required to pay intrastate access charges prospectively and retroactively to January 1, 1984. It is implicit in the concept of the Commission granting Sprint authority for intrastate interLATA services that Sprint will pay all relevant intrastate access charges once certificated. However, ATTCOM has raised a new issue (i.e. payment of access charges retroactive to January 1, 1984, as a condition to granting certification) by its brief to which no party had prior notice. Sprint challenged ATTCOM's raising the issue of retroactive payment of access charges.

The Commission is of the opinion and finds that ATTCOM has improperly raised the issue of retroactive payment of access charges. ATTCOM chose not to raise the issue at or before the October 30, 1984, hearing. ATTCOM did not offer any testimony at the hearing.² Therefore, no party had notice of that issue and to consider it now may result in a denial of due process. However, even if the Commission considered this issue on the merits, there is insufficient evidence to indicate that Sprint was wilfully providing intrastate communications service's within Kentucky without a certificate or that Sprint was holding itself

² T.E. at page 168.

out to the public as such a carrier. As recognized in the October 26, 1984, Order in Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and related Services Markets in Kentucky, there is currently no evidence to indicate that Sprint has carried significant amounts of any intrastate traffic.

During rehearing in Administrative Case No. 273, it came to the Commission's attention that Sprint, which had an intrastate certificate request pending, might seek total intrastate authority as a WATS reseller rather than attempt to obtain an intrastate, interLATA-only certificate. The Commission's Order on Rehearing advised Sprint that this issue and whether partially facilities-based carriers should be treated as "pure" resellers were proper concerns for Sprint's certificate case.³

At the beginning of the October 30, 1984, hearing in this case, all the applicants were asked whether they were seeking certification as a non-dominant facilities-based carrier providing interLATA communication only or as a reseller.⁴ Sprint, MCI and Allnet all replied that they sought an intrastate interLATA certificate, not status as a reseller.⁵ Thus, even though the Commission had expressly stated that its certificate case was the proper forum to raise the issue of whether facilities-based or

³ October 26, 1984, Order in Administrative Case No. 273 at pages 19 and 25-26.

⁴ T.E. at page 7.

⁵ T.E. at page 8.

reseller treatment should be accorded Sprint, and logically any other applicant seeking the same authority and treatment, Sprint as well as MCI and Allnet, chose not to pursue the matter at the hearing in its certificate case.

In its brief ATTCOM requests that the Commission recognize Sprint, MCI and Allnet as facilities-based carriers. Since Sprint is not seeking operating authority as a WATS reseller and is seeking only intrastate, interLATA authority, the issue raised by ATTCOM does not require the Commission take action at this time.

ATTCOM alleges in its post hearing brief that Sprint has not met the requirements concerning jurisdictional traffic studies imposed by the October 26, 1984, Order in Case No. 273.⁶ This Order required that,

...any OCC seeking intrastate interLATA authority in Kentucky shall provide valid estimates of the volume of Kentucky intraLATA traffic carried over its network within 3 months from the date of any certificate granted or 3 months from the date of this Order, whichever occurs first.⁷

This Order further required that,

...OCCs seeking intrastate interLATA certification shall...agree to supply the information discussed in the prior ordering paragraph [reproduced above] as a precondition to obtaining a certificate and as a condition to retaining it.⁸

⁶ Brief of AT&T Communications of the South Central States, Inc., pp. 9-10.

⁷ Order on Rehearing, Administrative Case No. 273, p. 25.

⁸ Ibid.

In its reply brief, Sprint asserts that, "[t]he record in this proceeding clearly refutes ATTCOM's allegations in this regard."⁹ Sprint goes on to state that it,

...has agreed to provide information about the volume of its Kentucky intraLATA traffic to the Commission staff, in compliance with the Order of October 26, 1984...¹⁰

The Commission is of the opinion and finds that Sprint has, thus far, met the requirements contained in the October 26, 1984, Order concerning jurisdictional traffic studies. GTE Sprint has agreed to supply the required information. A conference is being scheduled to determine precisely how GTE Sprint will furnish this information. The Commission fully expects that MCI will provide the agreed-upon information within the specified time period. Should GTE Sprint fail, at a future juncture, to comply with the traffic reporting provisions contained in the October 26, 1984, Order, the Commission will, at that time, take appropriate action.

In Administrative Case No. 273, the Commission required companies filing for a certificate of public convenience and necessity to make a showing of financial viability. This could take the form of pro forma financial statements or, as an alternative subject to waiver by the Commission, sufficient cash reserves to sustain the applicant through its initial operating period. The Commission also required that Kentucky-specific

⁹ Reply Brief of Sprint, p. 4.

¹⁰ Ibid.

records, be submitted annually including a balance sheet, income statement, a statement of changes in financial position, and other information. Sprint in this proceeding submitted financial information to indicate that it possesses the financial viability to provide service in Kentucky. Sprint also indicated at the hearing that it currently does not maintain Kentucky-specific records, but that it would be willing to work with the Commission's staff to meet the intrastate reporting requirements.¹¹ The Commission expects Sprint to notify the Commission should any problems arise in the fulfillment of the reporting requirements of Administrative Case No. 273.

FINDINGS AND ORDER

The Commission, having considered evidence of record and being advised, is of the opinion and finds that:

(1) Sprint is technically capable of providing the service.

(2) Sprint has shown that it is financially able to provide provide telecommunications services within Kentucky.

(3) Sprint should be granted a certificate of public convenience and necessity to provide intrastate interLATA telecommunications services to the public.

(4) Sprint should not be allowed to provide intrastate intraLATA services to the public.

¹¹ Transcript of Evidence, page 69.

(5) Sprint should conform to its intrastate offering of service to the provisions of the May 25, 1984, and October 26, 1984, Orders in Administrative Case No. 273.

(6) Sprint's rates as filed should be approved.

(7) Sprint should file its tariffs containing its rates, rules, and regulations in the manner prescribed by the Commission.

IT IS THEREFORE ORDERED that Sprint is granted a certificate of public convenience and necessity to provide intrastate - interLATA communications to the residents of Kentucky. This grant is expressly conditioned upon it's compliance with the May 25, 1984, Orders in Administrative Case No. 273 and the November 19, 1984, Order in Case No. 8838, including, but not limited to, the following: provision of jurisdictional reports to local exchange carried consistent with the Commission-approved methodology and maintenance of complete, detailed and accurate records, workpapers and supporting documentation for those jurisdictional reports for one year, provision of a traffic study as contemplated in the October 26, 1984, Order in Administrative Case No. 273, and compliance with advertising requirements and restrictions regarding intraLATA service.

IT IS FURTHER ORDERED that Sprint shall not provide intrastate intraLATA services to residents of Kentucky.


IT IS FURTHER ORDERED that Sprint shall conform to the Order on rehearing dated October 26, 1984, in Administrative Case No. 273.


IT IS FURTHER ORDERED that Sprint shall be classified as a facilities-based carrier and not a WATS reseller.


IT IS FURTHER ORDERED that Sprints rates as filed are approved and that it shall file its tariffs setting forth its rates, rules and regulations in the manner prescribed by the Commission within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 21st day of November, 1984.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary